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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,766	11/21/2001	Stephen John Hinde	B-4398 619336-4	1903

22879 7590 10/12/2006

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FORT COLLINS, CO 80527-2400

EXAMINER

VO, HUYEN X

ART UNIT	PAPER NUMBER
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2626

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

09/990,766

Applicant(s)

HINDE ET AL.

Examiner

Huyen X. Vo

Art Unit

2626

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

The Appeal Brief filed on 05 July 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

Referring to Office Action.

## **DETAILED ACTION**

### ***Defective Appeal Brief***

1. An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief filed July 2005:

- 1) "Summary of claimed subject matter," as set forth in 37 CFR 41.37(c)(1)(v);
- 2) "Grounds of rejection to be reviewed on appeal," as set forth in 37 CFR 41.37(c) (1) (vi);
- 3) "Claims appendix," as set forth in 37 CFR 41.37(c) (1) (viii);
- 4) "Evidence appendix," as set forth in 37 CFR 41.37(c)(1)(ix); and
- 5) "Related proceedings appendix" as set forth in 37 CFR 41.37(c)(1)(x).

In addition, the following section, Grouping of Claims, not required, and should be removed.

A substitute brief that is compliance with 41.37(c) is required. For more information, see the United States Patent and Trademark website [www.uspto.gov](http://www.uspto.gov), and, in particular, the web page entitled "More Information on the Rules Practice Before the Board of Patent Appeals and Interferences, Final Rule" located at the following URL:

[www.uspto.gov/web/offices/dcom/bpai/frzoo4/moreinfo.html](http://www.uspto.gov/web/offices/dcom/bpai/frzoo4/moreinfo.html).

Accordingly, it is ORDERED that the application is returned to the examiner to:

- 1) hold the Appeal Brief filed July 2005 defective;
- 2) require appellants file a new Appeal Brief compliance with 37 CFR 5 41.37(c);

- 3) for consideration of the substitute Appeal Brief, and, if necessary, to vacate the Examiner's Answer mailed October 31, 2005, and issue new Examiner's Answer;
- 4) for written notification to appellants regarding the action taken;
- 5) to have a copy of Scott et al. (WO 00/30329) scanned into the electronic file;
- 6) and for such further action as may be appropriate.

2. Appellant is required to comply with provisions of 37 CFR 41.37(c). To avoid dismissal of the appeal, Appellant must comply with the provisions of 37 CFR 41.37(c) within ONE MONTH or THIRTY DAYS, whichever is longer, from the mailing of this communication. Extensions of time may be granted under 37 CFR 1.136.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen X. Vo whose telephone number is 571-272-7631. The examiner can normally be reached on M-F, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on 571-272-7602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

HXV

9/12/2006

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**RICHEMOND DORVIL**  
**SUPERVISORY PATENT EXAMINER**